authorized to meet during the session of the Senate on Tuesday, June 08, 2021, at 2:30 p.m., to conduct a hearing.

U.S. SUPREME COURT

Mr. WHITEHOUSE. Madam President, in my opening speech about the rightwing scheme to capture the Court, the Supreme Court, I described the secret strategy memo that Lewis Powell wrote on the eve of his appointment to the Court about how to deploy corporate political power.

As a Justice of the Supreme Court, Powell had the chance to prove to the corporate world his secret memo's theory of what could be achieved by ''exploiting judicial action''—his phrase—particularly with, as he called it, ''an activist-minded Supreme Court.''

Second, Powell had the chance on the Court to start laying the legal groundwork for precisely the sort of corporate political activity that his secret memo had recommended to the U.S. Chamber of Commerce, and Powell did both.

The first case that allowed Powell to implement recommendations from his secret report came in 1976, in a case about the Federal Election Campaign Act. The case was Buckley v. Valeo, and the decision was a beast—138 pages, with another 83 pages of dissent and concurrence cobbled together by the Court with what one observer called ''extraordinary speed.'' Five Justices in that case, including Powell, were described as First Amendment hawks who were wary of any portion of the Federal Election Campaign Act that could inhibit free speech and association.

Now, you have to understand that free speech and association were buzz words for corporate political activity precisely of the sort championed in Powell's secret chamber memo. Free speech meant corporate America having the right to be heard, even to, as the secret report said, ''equal time.'' Freedom of association provided corporations the ''organization,'' ''careful long-range planning and implementation,'' and well-financed ''joint effort''—all those quotes—that Powell had recommended be done in his report ''through united action and national organizations.''

The Court's decision in Valeo did two noncontroversial things. It accepted that campaign contributions could be limited because unlimited campaign contributions could give rise to corruption or at least the appearance of corruption. Unlimited donations to candidates would even ''undermine representative democracy,'' the Court said. No big deal. The Court also decided that candidates may spend as much of their own money as they want on their own campaigns. It considered unlimited spending on one's own campaign protected by the First Amendment, as there was little danger of corruption from spending one's own campaign money on oneself.

So both of those holdings are unremarkable. What was remarkable was where Powell and his hawks took the Court when other interests, like corporate interests, wanted to spend money on a candidate. Corporate political spending per se was not at issue in the case, but spending by special interests is precisely the kind of political influence which Powell had recommended in his secret report to the chamber.

Powell and his hawks said special interest political spending, so long as it was not in the form of a campaign contribution, was protected by the same principle that protected a candidate spending his own money on his own campaign.

Powell asserted that limiting these supposedly ''independent'' special interest expenditures '''perpetrates (the) grossest infringement' on First Amendment rights.'' He did acknowledge the interest in '''purity' of elections,'' but he used skeptical quotation marks around the word ''purity,'' just like he had used skeptical quotation marks in his report around the word ''environment.'' But Powell dismissed those purity concerns as likely ''illusory,'' to use his word.

Powell's Bench memo for the case critiqued the election law's ''attempt to lower barriers to political competition to increase the range of voter choice.'' It read: ''[T]he attempt to open access for the many necessarily involves limiting the power of the few to exercise rights of speech and association protected by the Constitution.''

This interest in protecting the ''power of the few'' aligns exactly with Powell's secret chamber memo about corporate power and aligns with Powell's own notes, which have more of his disparaging quotation marks questioning some of the briefs filed in the Valeo case that ''identify one of the 'evils' as the power of 'the wealthy few' (undefined but obviously unworthy people) to influence elections unduly.'' In tone and import, that comes right out of Powell's secret chamber report, which counted on the power of the corporate few.

Powell's Richmond history, his corporate law practice, his social position, his boardroom experience, and his anxiety about upheaval all align with a corporate worldview that society's decisions should be made by the sort of people in corporate boardrooms, so the power of those ''few'' had to be protected, to battle against what his report called the ''broad attack'' both on the ''American free enterprise system'' and the ''American political system of democracy under the rule of law.'' Particularly important it was to protect that power when, as he had written to the chamber, the trouble is ''deep'' and the ''hour is late.''

To accommodate that corporate perspective, the Court had to reach judgments about politics. It showed itself helpless. The amateurish political outlook of the Court in Valeo stood out in the late-added footnote 52, which, in the interest of drawing clear lines—''vagueness'' being a stated concern of the Justices—exempted from disclosure political advertisements that did not expressly advocate for the election or defeat of a candidate using magic words like ''vote for,'' ''vote against,'' ''elect,'' or ''defeat.''

In the Court's amateur opinion, a hostile bombardment of TV advertising challenging a candidate's morals, decency, or integrity, or attacking the candidate's alignment with the community's values, and dropped on the candidate in the heat of election season with the intention of defeating the candidate, was not deemed advocacy in the election—unless it used those magic words. The idiocy of that premise is obvious to anyone in politics.

The Court's amateurish folly about political spending extended to presuming that spending by a powerful interest for a candidate would create no risk of corruption; that the spending and the resulting influence could be kept separate and independent. That is idiotic in real life.

When a powerful political interest starts signaling that it will spend enormous sums to support candidates, guess what—candidates will find a way to take advantage, perhaps by attracting the spending to their own side by the positions they take or perhaps by avoiding taking positions that would send the spending to their opponent's side. The Court presumed that some etiquette would separate interest from candidate, but that was folly. It is blindingly naive to think that politics would produce no workarounds, that no coordination or signaling or intermediaries would violate whatever etiquette of independence the Court had in mind.

As we know, information travels fast in politics, never mind the etiquette. Drop a rock in a stream, and the stream flows around it. Put eager candidates and enormous interested spenders together, and trouble will follow, as it has. Look no further than the corruption of American politics on climate change by the fossil fuel industry. Again, this was idiocy from amateurs.

But the Valeo folly accomplished one thing: It opened the lane for unlimited special interest spending to come into elections to support or oppose candidates, just as Powell's secret memo had recommended.

The next opportunity for Powell came 2 years later, and this, time it involved not just the type of political activity corporations would likely undertake but corporations directly.

Massachusetts had banned corporate campaign contributions from statewide political referenda. A Massachusetts bank, the First National Bank of Boston, objected and sued. Frank Bellotti was then the Commonwealth's attorney general and defendant.

First National Bank of Boston v. Bellotti wound its way up to the Supreme Court. Here, the question was the very right of corporations to influence popular elections—in this case, a

referendum election. In a 5-to-4 decision, Powell wrote for the Republican-appointed majority that corporations had a constitutional right to engage in that political activity.

This outcome can't be found in the Constitution, which provides no political role whatsoever to corporations, but this outcome aligned precisely with the recommendations of Powell's secret report to the chamber. Indeed, it was the heart of his pitch to the chamber. His entire secret plan for corporate political power would fall apart if States could bar corporate influence from elections, even referendum elections. Powell had urged in his secret report that corporate interests not have ''the slightest hesitation to press vigorously in all political arenas'' and that corporations should show no ''reluctance to penalize politically those who oppose [them].'' Corporations could never ''press vigorously'' or ''penalize politically'' if they could be kept out of elections, and so Bellotti was decided.

Paired with Valeo, the Bellotti case established that corporations had a constitutional right to engage in elections—at least referendum elections—with as much money as they wanted, or at least as much money as they could raise, so long as the election spending was not in the form of campaign contributions.

Ultimately, this laid the framework for the infamous Citizens United decision, another bare, 5-to-4 Republican majority that gave in this case corporate interests a full constitutional right to unlimited political spending and, as a practical matter, to unlimited anonymous political spending.

How, in Bellotti, did they get around a Constitution that provides corporations no political rights? The trick used was to focus on the message, not the messenger—completely overlook that it was a corporation, not a person. The Court said that corporate political spending was actually speech, that influencing a popular referendum was the ''type of speech'' at the heart of representative democracy, and that the public had a right to hear it. The fact that corporations are not people and, indeed, that they have advantages over real people in electioneering and, indeed, that they might even come to dominate popular democracy because of those advantages was overlooked by directing attention to the speech, not the speaker.

If the type of speech was relevant to the public debate, Powell said, it doesn't matter whether a corporation or a person says it—except every piece of this is wrong. Money is not speech. Corporations are not people. And looking at the message, not the messenger, would allow any entity's message into our politics, even foreign ones. Then add in anonymity, and the problem goes toxic, as we now see in our country today. ''We the People'' becomes ''We the Hidden Anything With Money.''

The last case for Powell was Federal Election Commission v. Massachusetts Citizens for Life in 1986. Here, the question was whether an advocacy group of precisely the kind Powell had in mind in the chamber memo was forbidden to spend its corporate treasury funds in a Federal election.

Now, the situation was that Congress had blocked corporations from using their treasury funds in Federal elections. They had to raise money from voluntary donations; hence the corporate PACs that we have seen that had to raise and spend their own money. The Court accepted that corporate treasuries might give corporate voices ''an unfair advantage in the political marketplace'' given their vast corporate wealth and resources. But in the case before it, the Court decided that nonprofits were different. They were designed for advocacy, and they didn't have the same sort of treasury funds as business corporations.

Again, remember the Powell memo. Powell didn't recommend that corporations undertake their political work directly. He had pressed for ''organization,'' for ''joint effort.'' He had urged corporate America to pursue ''the political power available only through united action and national organizations.'' And guess what. The U.S. Chamber of Commerce, the national organization to which Powell had delivered his secret recommendations, was a nonprofit corporation.

In his years on the Court, Lewis Powell made good on the secret recommendations that he had made to the U.S. Chamber of Commerce 5 months before joining the Court. He showed that ''an activist-minded Supreme Court''—his words—could be that ''important instrument for social, economic and political change''—his words—that he had proposed. He opened a lane for unlimited money into politics, enabling what his secret report had called ''the scale of financing available only through joint effort.'' He bulldozed aside bars on corporate spending and politics so corporations could deploy, just as his report had urged, ''whatever degree of pressure—publicly and privately—may be necessary.'' And he allowed advocacy organizations to spend their treasuries in politics, opening the way for the ''organization,'' ''joint effort,'' and ''united action'' he had called for in his report through ''national organizations.''

All the key pieces were in place to unleash the corporate influence machine that he had recommended to the chamber, influence that dominates much of American politics today, influence that controls much of what we do in the Senate Chamber today, and in which, of all things, the chamber, which was his client for the secret report, is today the apex predator of corporate influence, red in tooth and claw.

Everything was aligned for what Powell had recommended: corporate ''political power,'' ''assiduously cultivated,'' ''used aggressively and with determination,'' with ''no hesitation to attack,'' ''not the slightest hesitation to press vigorously in all political arenas,'' and no ''reluctance to penalize politically those who oppose.''

It is a dark achievement, but it is quite an achievement. And, interestingly, Powell's official biography frames out his judicial career without mentioning his role as the early orchestrator of corporate political influence in American politics. It is actually likely his most significant and lasting legacy.

To be continued.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SCHUMER. Madam President, I move to proceed to executive session to consider Calendar No. 131.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Zahid N. Quraishi, of New Jersey, to be United States District Judge for the District of New Jersey.

CLOTURE MOTION

Mr. SCHUMER. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 131, Zahid N. Quraishi, of New Jersey, to be United States District Judge for the District of New Jersey.

Charles E. Schumer, Richard J. Durbin, Tina Smith, Sherrod Brown, Jon Ossoff, Alex Padilla, Jacky Rosen, Tammy Duckworth, Brian Schatz, Chris Van Hollen, Catherine Cortez Masto, Robert Menendez, Richard Blumenthal, Patty Murray, Martin Heinrich, Sheldon Whitehouse, Patrick J. Leahy.

LEGISLATIVE SESSION

Mr. SCHUMER. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SCHUMER. Madam President, I move to proceed to executive session to consider Calendar No. 129.